

General Terms of Metal Trading

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1. Terms of Metal Trading

- “Analysis”* = The survey of a material by means of a recognised mode of assay to determine the composition, in particular referring to the metal content and other components.
- “Sampling Evaluation”* = The extraction of a representative sample from a particular delivery to determine the agreed quality.
- “Content”* = Metal content.
- “Description of the Material”* = An abbreviated form of the name of the material to be delivered according to the contract, without further precise specifications, such as classification, details of metal content or other quality requirements.
- “Metal Content”* = The amount of metallic components within a delivery. As a rule the amount will be given in percentage or per thousandth terms.
- It is customary even in the contractual agreement, to indicate whether the metal content refers to the metal's dry or original state. Specific tolerances of the metal content may also be agreed in the contract.
- “Quality”* = Composition of a material.
- “Specification”* = Description of the agreed quality of a material by means of naming various characteristics of essential importance in the contract.
- In particular classification according to the classifications of non-ferrous metal scrap, if required, - supplemented by further specific characteristics, components, intended uses or according to individual agreements by the parties.
- The specification may either be included in writing in the contract details or may be defined verbally.
- Radioactively contaminated material is excluded from any delivery, even when this has not been specifically agreed between the parties and when the quality meets the contractual specifications in all other areas.

2. Contractual Terms to determine the contractual quality

To determine the contractual quality of a commodity, the following terms are used in metal trading:

- a). *“According to inspection”* The material must be the one that was inspected by the buyer.
- b). *“tel quel”* The material purchased must only correspond in sort to the quality specified in the contract without taking into account its actual metal content and other characteristics.
- c). *“According to sample”* The material must correspond to the representative sample submitted.
- d). *“According to specification”* The quality must be in accordance with the description made for the specification to which it refers.

3. Implementation of quality regulations

a). Material which is rejected by the buyer, must be warehoused intact and separately by him, in order to enable an inspection by the buyer and seller or their nominees. Otherwise the material is deemed to have been accepted free of defects.

Discrepancies, in as far as they are not immediately conclusive, should remain provable.

b). In the event of a sampling evaluation having to take place to determine the quality of the delivery, the procedure is as follows:

- After an agreement has been reached on the number and composition of the samples to be taken at a mutually agreed and contractually defined location, the sampling should take place in the presence of both contractual parties, who may choose to be independently represented, if they so wish.
- Only in cases where it has been specifically agreed between the parties, may sampling take place on a trustee basis by the purchaser, without the presence of the seller or his representative.
- A minimum of three representative samples will be taken for the analysis in the course of the sampling process.

c). It is customary that the analysis is carried out by a contractually defined laboratory at the expense of both parties.

On the basis of a specific agreement, the following procedures may also be used:

- Assay by the purchaser for the seller on a trustee basis.
- Exchange of assays, i.e. a sample is assayed by the buyer or the seller at his own cost. A sealed sample is left with the buyer in this case in the event of a potential reference assay.
- The assays should be exchanged by crossed post on a date pre-determined by both parties. The franking of exchange letters is not permitted.
- If the results are border-line, the mean of both values will be decisive for settlement purposes. The decisive point at which a reference assay is necessary will be determined as well as the name of the laboratory, which will have to carry out a reference assay in the case of the border-line being exceeded.

The results of the reference asssay are final and binding. The costs of the reference assay shall be at the expense of the losing party, i.e. the party whose result is furthest away from the result determined by the reference assay.

d). Unless otherwise agreed it is customary that quality claims will be notified by the buyer by means of the fastest method that provides certified receipt of the notice to the seller or his representative within the following time-periods:

- differences in weight immediately upon receipt of the material.
- moisture within three working days (at the place of destination), the sample must be taken immediately and has to be secured.
- any other quality claims within eight working days (at the place of destination).
- Material subject to assay within fifteen working days (at the place of destination).

e). Should the seller not reply within five working days after receipt of notice of the claim it is usually regarded as accepted with all legal consequences which ensue.

4. Quantities

a). **Tolerance plus or minus:**

Customary are

- for fixed weights +/- 1%
- for weights qualified by the word "about" +/- 5%

Partial deliveries are not standard practice. The allowance of a partial delivery requires a special arrangement. The tolerances plus or minus then refer to each seperate partial delivery.

b). Weighing

Unless otherwise agreed, it is customary for the deliveries to be accompanied by the following:

- by rail delivery the official rail weight document.
- by truck delivery the official weight document showing empty and full weights (actual net weight) established by a sworn weigher.
- Articulated vehicles will be uncoupled before weighing unless the weighbridge allows the weighing of the whole unit
- Packed material will usually be accompanied by a packing list.
- Different items or qualities in one shipment are to be weighed and marked separately.
- In case of weight differences the receiving party is obliged to immediately make a formal complaint to the driver or the carrier on a copy of the bill of lading or delivery note or similar document equivalent to a receipt for the carrier. At the same time the supplier must be notified by telefax or telephone of the weight difference which has been ascertained.
- Unless otherwise stated the weights are to be understood to be net and the weight of the packing is to be specified additionally.

5. Packing

The method of packing is by mutual agreement. If the supplier requires the material to be returned, this is at the supplier's own risk and cost.

6. Delivery

All contract terms and conditions which are not defined by normal practice or by specific contractual obligation, should in the case of any doubt be governed by the edition of the INCO TERMS, issued by the International Chamber of Commerce, Paris, which was current at the time of the signing of the contract.

7. Contract Terms to determine the time of delivery

When the time of delivery is contractually fixed, it is customary that the following are stipulated:

“Immediate delivery” requires delivery within 5 working days after the contract was concluded at the agreed destination.

“Prompt delivery” requires delivery within 10 working days after the contract was concluded at the agreed destination.

If the delivery is agreed upon within a specific period, (a particular month or a particular time of year) it is customary for the seller to specify the exact time of delivery. In the case of a deadline being set as a result of non-fulfilment or lack of performance as contractually agreed

upon by the seller, it is customary that a deadline be set, which amounts to half the deadline which was originally agreed upon; may however not exceed 10 working days.

Where licenses, transport permits etc. are required, the seller is to blame if the contractually agreed upon date of delivery is exceeded through errors on his part.

8. Contract terms to determine the purchase price.

The invoicing or price setting can be agreed upon between the parties according to the actual metal content of the material delivered. The requirements of the actual metal content result in consideration of the following terms:

- a). *“Works valuation”* After a prompt sampling and assay has taken place on a trustee basis, the purchaser must accept the material and settle the invoice.

- b). *“According to analysis”* The purchaser must accept the material and on the basis of a customary sampling and assay should settle the invoice, unless other agreements were made concerning the type of sampling and assay.

- c). In so far as services such as “extruding”, “cutting”, “shredding” etc are to be undertaken, it should be established in the contract as to whether the agreed costs refer to the weight on despatch or arrival.

9. Payment

The method and time of payment are to be specified in the contract.

“Cash Payment” is understood to be without discount immediately on receipt of the agreed documents.

The fulfillment of the purchase price request occurs:

- via cash payment, on receipt of the payment.
- via cheque payment or letter of credit, once cashed.

Decisive in the punctuality of the payment, is however, receipt of the cheque by the seller.

- via bank transfer on the value date of the amount on reaching the agreed account.

10. Disputes

For the professional settlement of disputes relating to metal delivery or purchase contracts, either party may appeal to the Verein deutscher Metallhändler e.V.'s court of arbitration.

